LPA No.193 of 2006 (O&M)

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

LPA No.193 of 2006 (O&M)

DATE OF DECISION: 30.10.2006

Dharam Chand and others ..Petitioners

Versus

Gram Panchayat and others ....Respondents.

CORAM: HON'BLE MR.JUSTICE J.S. KHEHAR
HON'BLE MR. JUSTICE S.D. ANAND

PRESENT: Mr. P.K. Gupta, Advocate for the appellants.

J.S. Khehar, J. (oral)

Learned counsel for the appellants states that the original writ petition was filed by the Gram Panchayat, wherein the appellants herein were impleaded as private respondents. The private respondents were 99 in number. Out of the aforesaid 99 private respondents, the instant Letters Patent Appeal has been filed on behalf of 63 of the original private respondents.

Learned counsel for the appellants, during the course of hearing of the instant appeal, has not contested the determination at the hands of the learned Single Judge while disposing of CWP No.5460 of 1985. It is not the case of the appellants, that the controversy in hand is

not akin to the one adjudicated upon by the Supreme Court in Gram Panchayat, Noorpur V. State of Punjab, 1997(3) RCR (Civil) 47. It is, therefore, apparent that the appellants herein are not contesting the validity of the conclusions drawn by the learned Single Judge in his order dated 24.3.2004.

The solitary contention of the learned counsel for the appellants is, that approximately 30 of the private respondents in CWP No.5460 of 1985 had died when the learned Single Judge adjudicated upon the matter on 24.3.2004. It is also the contention of the learned counsel for the appellants that the legal representatives of none of the private respondents who had died, were impleaded as party-respondents when the main case was decided on 24.3.2004. It is, therefore, the contention of the learned counsel for the appellants that the writ petition should be deemed to have abated. And as such, the same could not have been adjudicated upon on merits.

In our view, the instant contention does not lie at the hands of the appellants herein, as the appellants were duly represented before the learned Single Judge. It would be pertinent to mention, that in so far as the Rules of Procedure of this Court in proceedings under Articles 226 and 227 of the Constitution of India are concerned, it has been specifically provided in the High Court Rules and Orders, that where no special procedure has been prescribed, the provisions of the Code of Civil Procedure would govern the procedure to be adopted in a writ petition. Rule 32 of the High Court and Rules, Volume 5, Chapter 4, Part F, reads as under:-

> "32. Application of C.P.C.- In all matters for which no

> provision is made by these rules, the provisions of the Code of Civil Procedure, 1908 shall apply mutatis mutandis, in so far as they are not inconsistent with these rules."

In so far as the Code of Civil Procedure is concerned, the provisions of Order 22, sub-rules (3) and (4) of rule 4, as are applicable to the territories of the States of Punjab, Haryana and the Union Territory, Chandigarh, are being extracted hereunder:-

> "(3) Where within the time limited by law no application is made under sub-rule (1) the suit shall not abate as against the deceased- defendant and judgment be pronounced notwithstanding the death and shall have the same force and effect as if it had been pronounced before the death took place."
>
> "4). If a decree has been passed against a deceased-defendant a person claiming to his legal representative may apply for setting aside the decree qua him and if it is proved that he was not aware of the suit or that he had not intentionally failed to make an application to bring himself on the record, the Court shall set aside the decree upon such terms as to costs or otherwise as it thinks fit."

It is apparent from a perusal of sub-rule (3) of rule 4 under Order 22 of the Code of Civil Procedure, that in a controversy like the one in hand, wherein some of the persons impleaded as private respondents, had died when the matter came to be disposed of, by a deeming fiction of law, the judgment would be deemed to have been pronounced, before the death of the respondents took place. Additionally, it has been envisaged in sub-

rule (4) of rule 4 under Order 22 of the Code of Civil Procedure that the legal representatives of such deceased-respondents shall have the right to move an appropriate application for setting aside the judgment rendered by this Court at their back. Rule 32 of the High Court Rules and Orders, Volume 5, Chapter 4, Part F would, therefore, make the aforesaid provisions applicable to proceedings under Articles 226 and 227 of the Constitution of India.

It would be pertinent to mention that in order to canvass the instant proposition, as has been noticed in the foregoing paragraph, learned counsel for the appellants placed reliance on the decision rendered by the Apex Court in Puran Singh and others V. State of Punjab and others, JT 1996(1) S.C. 362. It is not possible for us to accept the instant plea of the learned counsel for the appellant on account of the fact, that neither the provisions of the High Court Rules and Orders, nor the amended provisions of the Code of Civil Procedure, seem to have have been brought to the notice of the Apex Court at the time of adjudication of the matter in Puran Singh's case (supra).

Be that as it may, it would be pertinent to mention that the controversy in hand, does not adjudicate any private rights of parties based on individual facts. The judgment, in respect of which the instant appeal has been filed, is a determination on a pure question of law, based on a decision rendered by the Apex Court. And as has already been recorded hereinabove, against the issue of law adjudicated upon by the learned Single Judge, no infirmity has been pointed out by the learned counsel for the appellants.

For the reasons recorded hereinabove, as well as, on account

of the fact, that there is a delay of 749 days i.e. more than two years, in filing the instant appeal, and a further 32 days in refiling the appeal, we find no merit in the claim raised by the appellants. The same is accordingly dismissed.

(J.S. Khehar)
Judge

(S.D. Anand)
Judge

October 30, 2006.
vig